

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

DARNELL KEEL and MERRITT GENTRY,	)	
	)	
Plaintiff,	)	
	)	Case No.: 09 C 6254
v.	)	
	)	
CITY OF HARVEY, et al.,	)	
	)	
Defendants.	)	

**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO REMAND**

Defendants, City of Harvey, Eric Kellogg, Sandra Alvarado and Steven Porter, by their attorneys, Julie A. Bruch and Joshua S. Abern, for their response to the motion to remand filed by Plaintiffs, state as follows:

1. On October 2, 2009, Darnell Keel and Merritt Gentry (Plaintiffs) filed a six count fifth amended complaint against the City of Harvey, Mayor Kellogg, Sandra Alvarado and Steven Porter. The complaint purported to state causes of action under 42 U.S.C. §1983 for due process violations and for an alleged conspiracy. (Doc. 1).

2. On January 21, 2010, this Court entered a Memorandum Opinion and Order granting Defendants' motion to dismiss the fifth amended complaint in its entirety without prejudice. (Doc. 18).

3. Plaintiffs' due process claims were dismissed for not showing inadequate state law remedies. Plaintiffs' conspiracy claims were dismissed for not showing a constitutional violation.

4. After this matter was dismissed without prejudice and a motion for reconsideration was denied, Plaintiffs filed the instant motion to remand.

5. Plaintiffs' motion must be denied as there is no pending action before this court. All claims have been dismissed and there are no claims, brought under either state or federal law, which necessitate remand.

6. "The rule in removal cases is once the federal claims drop out prior to trial and the court declines to exercise supplemental jurisdiction over the remaining state law claims, the court may either remand the case or dismiss the state law claims, although the latter definitely is not the preferred course of action." *Teta v. Packard*, 959 F.Supp. 469, 477 (N.D. Ill. 1997); see also *Baron v. Pardeeville*, 419 F.Supp.2d 1056, 1064 (W.D. Wis. 2006) ("When a court declines to exercise supplemental jurisdiction over state law claims in a case that has been removed from state court, the court has two options: the claims may either be dismissed without prejudice or the case may be remanded under 28 U.S.C. §1447(c) to the state court from which it was removed.").

7. In this case, not only are there no claims left to remand, but this court has already dismissed the case without prejudice. Remand is therefore improper and Plaintiffs' motion must be denied.

WHEREFORE, Defendants, City of Harvey, Eric Kellogg, Sandra Alvarado and Steven Porter pray that this Court deny Plaintiffs' motion to remand, and for such other and further relief as this court deems appropriate

CITY OF HARVEY, ERIC KELLOGG  
SANDRA ALVARADO AND  
STEVEN PORTER

By: s/Joshua S. Abern  
One of Their Attorneys

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 11, 2010 I electronically filed Defendants' Response to Plaintiffs' Motion to Remand with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Kelly A. Saindon  
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CITY OF HARVEY, ERIC KELLOGG, SANDRA  
ALVARADO and STEVEN PROTER

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